

Introduced by Senator Wyland

February 21, 2014

An act to amend Section 368 of the Penal Code, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

SB 1302, as introduced, Wyland. Elder abuse.

Under existing law, a person who is a caretaker of an elder or dependent adult who violates any law proscribing theft, embezzlement, forgery, fraud, or specified identify theft laws, is subject to a fine not exceeding \$1,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding \$950.

This bill would make technical, nonsubstantive changes to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 368 of the Penal Code is amended to
- 2 read:
- 3 368. (a) The Legislature finds and declares that crimes against
- 4 elders and dependent adults are deserving of special consideration
- 5 and protection, not unlike the special protections provided for
- 6 minor children, because elders and dependent adults may be
- 7 confused, on various medications, mentally or physically impaired,
- 8 or incompetent, and therefore less able to protect themselves, to

1 understand or report criminal conduct, or to testify in court
2 proceedings on their own behalf.

3 (b) (1) ~~Any~~ A person who knows or reasonably should know
4 that a person is an elder or dependent adult and who, under
5 circumstances or conditions likely to produce great bodily harm
6 or death, willfully causes or permits any elder or dependent adult
7 to suffer, or inflicts thereon unjustifiable physical pain or mental
8 suffering, or having the care or custody of any elder or dependent
9 adult, willfully causes or permits the person or health of the elder
10 or dependent adult to be injured, or willfully causes or permits the
11 elder or dependent adult to be placed in a situation in which his or
12 her person or health is endangered, is punishable by imprisonment
13 in a county jail not exceeding one year, or by a fine not to exceed
14 six thousand dollars (\$6,000), or by both that fine and
15 imprisonment, or by imprisonment in the state prison for two,
16 three, or four years.

17 (2) If in the commission of an offense described in paragraph
18 (1), the victim suffers great bodily injury, as defined in Section
19 12022.7, the defendant shall receive an additional term in the state
20 prison as follows:

21 (A) Three years if the victim is under 70 years of age.

22 (B) Five years if the victim is 70 years of age or older.

23 (3) If in the commission of an offense described in paragraph
24 (1), the defendant proximately causes the death of the victim, the
25 defendant shall receive an additional term in the state prison as
26 follows:

27 (A) Five years if the victim is under 70 years of age.

28 (B) Seven years if the victim is 70 years of age or older.

29 (c) ~~Any~~ A person who knows or reasonably should know that
30 a person is an elder or dependent adult and who, under
31 circumstances or conditions other than those likely to produce
32 great bodily harm or death, willfully causes or permits ~~any~~ an elder
33 or dependent adult to suffer, or inflicts thereon unjustifiable
34 physical pain or mental suffering, or having the care or custody
35 of ~~any~~ an elder or dependent adult, willfully causes or permits the
36 person or health of the elder or dependent adult to be injured or
37 willfully causes or permits the elder or dependent adult to be placed
38 in a situation in which his or her person or health may be
39 endangered, is guilty of a misdemeanor. A second or subsequent
40 violation of this subdivision is punishable by a fine not to exceed

1 two thousand dollars (\$2,000), or by imprisonment in a county jail
2 not to exceed one year, or by both that fine and imprisonment.

3 (d) ~~Any~~A person who is not a caretaker who violates any
4 ~~provision of law~~proscribing theft, embezzlement, forgery, or fraud,
5 or who violates Section 530.5 proscribing identity theft, with
6 respect to the property or personal identifying information of an
7 elder or a dependent adult, and who knows or reasonably should
8 know that the victim is an elder or a dependent adult, is punishable
9 as follows:

10 (1) By a fine not exceeding two thousand five hundred dollars
11 (\$2,500), or by imprisonment in a county jail not exceeding one
12 year, or by both that fine and imprisonment, or by a fine not
13 exceeding ten thousand dollars (\$10,000), or by imprisonment
14 pursuant to subdivision (h) of Section 1170 for two, three, or four
15 years, or by both that fine and imprisonment, when the moneys,
16 labor, goods, services, or real or personal property taken or obtained
17 is of a value exceeding nine hundred fifty dollars (\$950).

18 (2) By a fine not exceeding one thousand dollars (\$1,000), by
19 imprisonment in a county jail not exceeding one year, or by both
20 that fine and imprisonment, when the moneys, labor, goods,
21 services, or real or personal property taken or obtained is of a value
22 not exceeding nine hundred fifty dollars (\$950).

23 (e) ~~Any~~A caretaker of an elder or a dependent adult who violates
24 ~~any provision of law~~proscribing theft, embezzlement, forgery, or
25 fraud, or who violates Section 530.5 proscribing identity theft,
26 with respect to the property or personal identifying information of
27 that elder or dependent adult, is punishable as follows:

28 (1) By a fine not exceeding two thousand five hundred dollars
29 (\$2,500), or by imprisonment in a county jail not exceeding one
30 year, or by both that fine and imprisonment, or by a fine not
31 exceeding ten thousand dollars (\$10,000), or by imprisonment
32 pursuant to subdivision (h) of Section 1170 for two, three, or four
33 years, or by both that fine and imprisonment, when the moneys,
34 labor, goods, services, or real or personal property taken or obtained
35 is of a value exceeding nine hundred fifty dollars (\$950).

36 (2) By a fine not exceeding one thousand dollars (\$1,000), by
37 imprisonment in a county jail not exceeding one year, or by both
38 that fine and imprisonment, when the moneys, labor, goods,
39 services, or real or personal property taken or obtained is of a value
40 not exceeding nine hundred fifty dollars (\$950).

1 (f) ~~Any~~ A person who commits the false imprisonment of an
2 elder or a dependent adult by the use of violence, menace, fraud,
3 or deceit is punishable by imprisonment pursuant to subdivision
4 (h) of Section 1170 for two, three, or four years.

5 (g) As used in this section, “elder” means ~~any~~ a person who is
6 65 years of age or older.

7 (h) As used in this section, “dependent adult” means ~~any a~~
8 person who is between ~~the ages of 18 and 64~~, *64 years of age*, who
9 has physical or mental limitations ~~which~~ *that* restrict his or her
10 ability to carry out normal activities or to protect his or her rights,
11 including, but not limited to, persons who have physical or
12 developmental disabilities or whose physical or mental abilities
13 have diminished because of age. “Dependent adult” includes ~~any~~
14 a person between ~~the ages of 18 and 64~~ *years of age* who is
15 admitted as an inpatient to a 24-hour health facility, as defined in
16 Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

17 (i) As used in this section, “caretaker” means ~~any~~ a person who
18 has the care, custody, or control of, or who stands in a position of
19 trust with, an elder or a dependent adult.

20 (j) Nothing in this section shall preclude prosecution under both
21 this section and Section 187 or 12022.7 or any other ~~provision of~~
22 law. However, a person shall not receive an additional term of
23 imprisonment under both paragraphs (2) and (3) of subdivision
24 (b) for any single offense, nor shall a person receive an additional
25 term of imprisonment under both Section 12022.7 and paragraph
26 (2) or (3) of subdivision (b) for any single offense.

27 (k) In any case in which a person is convicted of violating these
28 provisions, the court may require him or her to receive appropriate
29 counseling as a condition of probation. ~~Any~~ A defendant ordered
30 to be placed in a counseling program shall be responsible for
31 paying the expense of his or her participation in the counseling
32 program as determined by the court. The court shall take into
33 consideration the ability of the defendant to pay, and no defendant
34 shall be denied probation because of his or her inability to pay.